

ESTTA Tracking number: **ESTTA717662**

Filing date: **12/30/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207770
Party	Defendant Samar Haddad
Correspondence Address	SAMAR HADDAD 7629A PINEVILLE MATTHEWS ROAD CHARLOTTE, NC 28226 UNITED STATES samar@flipnchicken.com, flipnchicken@gmail.com
Submission	Rebuttal Brief
Filer's Name	Samar Y. Haddad
Filer's e-mail	samar@flipnchicken.com, chris.haddad@me.com
Signature	/Samar Y. Haddad/
Date	12/30/2015
Attachments	RebuttalBrief.Signed.pdf(3182304 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application No.: 85/453782, Principal Register  
Mark: FLIP'N CHICKEN  
Filed: October 22, 2011  
Published: October 2, 2012  
Docket No.: FRI 0115(a) T4 (40294.145)

FRICKER'S PROGRESSIVE  
CONCEPTS, INC.,

v. Opposer,

SAMAR HADDAD.

Applicant

Opposition No. 91207770

---

APPLICANT'S REBUTTAL BRIEF

## Table of Contents

I. Introduction.....	3
II. Description of the Record.....	4
III. Recitation of the Facts.....	5
IV. Summary of Applicant's Argument.....	5
V. Exposition of Applicant's Argument.....	6
A. Applicant's mark is Dissimilar in Appearance, Sound and Connotation to Opposer's Mark.....	6
B. Applicant's Services Are Not Identical to Opposer's Services, and are Sold into Different Chanel of Trade.....	8
C. Members of the Public are Likely to Exercise a High Degree of Care in Discriminating between the Parties' Marks.....	8
D. The Applicant, as Junior User, Does Not Have a Duty to Refrain from Use of Its Mark as it is Not Similar.....	9
VI. Conclusion.....	9

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application No.: 85/453782, Principal Register  
Mark: FLIP'N CHICKEN  
Filed: October 22, 2011  
Published: October 2, 2012  
Docket No.: FRI 0115(a) T4 (40294.145)

FRICKER'S PROGRESSIVE  
CONCEPTS, INC.,

v. Opposer,

SAMAR HADDAD.

Applicant

Opposition No. 91207770

APPLICANT'S REBUTTAL BRIEF

**I. Introduction**

Samar Haddad ("Applicant") proposes to register and use mark FLIP'N CHICKEN in connection with restaurant services, restaurants featuring home delivery, and takeout restaurant services per filed Application Serial No. 85453782. The Trademark Office approved Applicant's mark for registration, and this action followed publication of the mark.

Fricker's Progressive Concepts, Inc. ("Opposer"), has filed this opposition to block Applicant from registering the FLIP'N CHICKEN mark. Opposer registers and uses FRICKER's and many varied and descriptive marks, such as FRICKIN', that are derived from this original mark in connection with restaurant services and related goods and services. None of these registrations include the word FLIP'N, FLIP or any description that would suggest food prepared by flipping. Opposer relies on customers identifying the original FRICKER'S mark along with various FRICKIN' marks in a treatment more akin to that of commercial impression.

FLIP'N CHICKEN has not and will not cause confusion with FRICKER'S combined with Opposer's related marks. While being completely reliant on the Opposer's testimony and related exhibits, the evidence shows Applicant's mark greatly differs from the Opposer's mark in appearance, sound, and meaning, and is categorically unrelated to the Opposer's use and registrations. Any alleged likelihood of confusion between the Applicant's and Opposer's marks is unfounded.

## **II. Description of the Record**

The sole evidence of record consists of printouts of the electronic records submitted as testimony by the Opposer.

### **III. Recitation of Facts**

#### **A. Applicant's Mark**

Applicant adopted this mark in good faith and is actively using it in connection with the preparation of restaurant services and related goods.

(20 TTABVUE 45-51)

#### **B. Opposer's Mark**

Opposer, owns the U.S Trademark for FRICKER'S in class 42 and various other marks incorporating the surname "Frick." Opposer does not hold a trademark registration for FRICKER'S combined with FLIP'N or any other variant or synonym. (1 TTABVUE 21-29)

### **IV. Summary of Applicant's Argument**

Applicant responds to Opposer's contention that Applicant's mark, FLIP'N CHICKEN, is similar in appearance, sound and connotation to Opposer's Fricker's Progressive Concepts, Inc. owned marks which are filed under the same class codes; that is where the similarities end.

Opposer's further contention that Applicant's goods and services are sold to the same customers is also without merit. Applicant offers counter service in a Fast Casual format with a very narrow menu served as a single choice of protein. Applicant's goods



and services are offered to customers who want to be sold one main thing: Chicken. (20 TTABVUE 45-51) Opposer offers a full service experience in a Casual format with a wider variety of proteins and courses. (15 TTABVUE 12-25) This distinction would require customers to exercise a higher degree of care when making a selection.

Finally, in response to Opposer's contention regarding the Applicant's standing as a junior user, the Applicant selected FLIP'N CHICKEN in good faith and due to many differing factors the likelihood of confusion is highly unlikely.

## **V. Exposition of the Applicant's Argument**

### *A. Applicant's Mark is Dissimilar in Appearance, Sound and Connotation to Opposer's Mark's*

Applicant's mark, FLIP'N CHICKEN, is dissimilar in appearance, sound and connotation to Opposer's main mark FRICKER'S and related marks including the descriptive term FRICKIN' and its derivation from the surname FRICK. To voice the distinctive elements of the words FRICKER'S or FRICKIN', which involve the /r/ and combination of /ck/ sounds would involve significantly different mouth movements, such as retracting the tongue so that the left and right side of the tongue touch the rear roof of the mouth and molars for the /r/ sound and holding the tongue as if to gargle for the /k/ sound. Meanwhile, to make the /l/ and /p/ sounds found in FLIP'N one would need to place the tongue on the alveolar ridge, (the ridge behind the front teeth,) while relaxing and letting airflow out the sides of the tongue for the /l/ sound and then bringing the lips together and releasing air in an explosive manner to make the /p/ sound. The differences in sound are highly distinguishable as well as

the variations of anatomical movement necessary to produce them. Although apostrophes are used in both marks they are placed in dissimilar positions in marks with differing letter counts.

The side-by-side comparison does not take into consideration the likelihood that consumers in any marketplace would regularly encounter the FRICKER'S mark along with its corresponding logo and conversely the FLIP'N CHICKEN mark with its distinctive logo. Consumers would be more likely to encounter the marks in the context below for comparison, if ever:

FLIP'N CHICKEN

FRICKER'S

Likelihood of confusion is minimized between these two marks in any context the consumer may experience when exposed either or both marks when taking the above into consideration.

When comparing the elements comprising the FLIP'N CHICKEN mark versus the FRICKER'S and FRICKIN' marks in connection to meaning, the Opposer's original meaning was derived from the Founder's surname. When considering the connotation of FRICKIN', or secondary meaning, of the "F" word and the founders' adoption of this meaning for their "amusing and memorable collection of marks," the claim that FLIP'N carries a similar secondary meaning is unsupported considering it is cited from crowd-sourced websites in Mr. Schirack's Affidavit, of unverifiable origin, that may be considered hearsay.



*B. Applicants Services Are Identical to Opposer's Services, and are Sold into Similar Channels of Trade*

Although Applicant and Opposer both provide restaurant services, it is important to note that they fall within different categories within this classification and have no geographical overlap under ordinary trade channels. The Applicant only sells a limited chicken-based menu in a Fast Casual format, while the Opposer sells a multitude of menu items that are comprised of various protein options for multiple courses in a Casual format. (15 TTABVUE 2, 7-25)

Consumers would likely be able to distinguish between FRICKER'S varied menu and full-service format and that of FLIP'N CHICKEN with counter service and quick transaction format. The different service formats, along with the difference in appearance and spelling of FRICKER'S and FLIP'N CHICKEN, and pronunciation of the marks should lend to eliminating the likelihood of confusion.

*C. Members of the Public are not Likely to Exercise a High Degree of Care in Discriminating between the Parties' Marks*

As it has previously been established, both the Applicant and Opposer serve chicken, the menus and service styles, as stated before, have distinguishable variation, along with the fact that one would initially need to make a deliberate choice between walking through the doors of or calling into a brick and mortar restaurant bearing either the

name FRICKER'S or that of FLIP'N CHICKEN. Ultimately, the Opposer is doing business as FRICKER'S while the Applicant is doing so as FLIP'N CHICKEN.

*D. A Junior User, the Applicant Has a Duty to Refrain from Use of a Mark  
Similar to Opposer's Marks*

The Applicant, like any other interested party, submitted its Mark for review and registration, per the procedures set forth by the Trademark Manual of Examining Procedure (TMEP), and it was cleared by the examining attorney for publication.

## **VI. Conclusion**

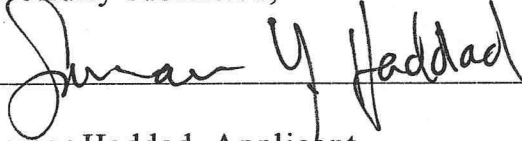
Applicant submits that the Opposer's primary mark, FRICKER'S and related marks FRICKIN' and FRICKIN' CHICKEN are unlikely to be confused with that of FLIP'N CHICKEN in connection to restaurant services and related goods and services. Applicant's mark is dissimilar in appearance, sound, and meaning to Opposer's marks, as Opposer has failed supply evidence to support otherwise.

The difference in categorical format, overall menu offerings, and geographical location is sufficient to give consumers the opportunity to discriminate between the parties' marks, regardless that they both serve chicken dishes.

Finally, the Applicant submits that, its duty is to follow those rules, which are set out by the TMEP and the TTAB, who initially approved the Applicant's mark for publication.

For reasons set forth above, Applicant request the Opposer's opposition be denied and Applicant's registration be upheld.

Respectfully submitted,

By   
Samar Haddad, Applicant

7629A Pineville-Matthews Rd.

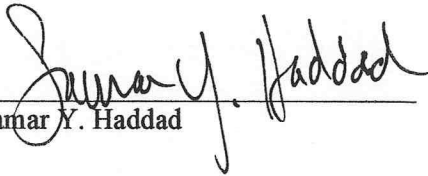
Charlotte, NC 29715

Telephone: 704-299-8981

samar@flipnchicken.com

**Certificate of Filing ESTTA**

I hereby certify that the Applicant's Rebuttal Brief is being filed with the Trademark Trial and Appeal Board using the United States Patent and Trademark Office's ESTTA web site on the 30th day of December, 2015.

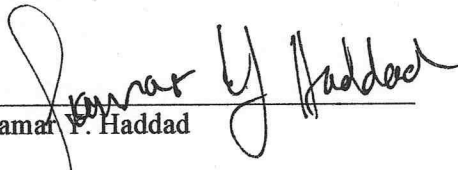
  
Samar Y. Haddad

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing Applicant's Rebuttal Brief was served upon Opposer by first class U.S. mail, postage prepaid, addressed to:

Dinsmore & Shohl  
B. Joseph Schaeff  
Fifth Third Center  
One South Main Street, Suite 1300  
Dayton, Ohio 45402-2058

on 12/30/15  
Date

  
Samar F. Haddad